

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Lack of Prosecution

Judge Haggerty granted defendant's second Motion to Dismiss for Lack of Prosecution after repeated failure by plaintiff's counsel to meet court-ordered deadlines. On two occasions, the court warned plaintiff's counsel to comply with future deadlines or face dismissal of the case with prejudice. After defendant's first Motion to Dismiss for Lack of Prosecution, the court denied the motion but ordered plaintiff to "strictly comply" with all deadlines or the case would be dismissed with prejudice. Despite these admonitions, plaintiff's counsel missed a deadline to file an amended complaint by three months, failed to file a response to a Motion for Summary Judgment, and filed an extension for the response three days after the deadline. The court found plaintiff's excuse that she had mis-scheduled the deadline dates on her calendar to be without merit. Using the

factors articulated by the Ninth Circuit, the court found that each factor weighed in favor of dismissal with prejudice.

Harrison v. Health Net Plan of Oregon CV 02-1320-HA (Opinion, Feb. 28, 2005)
Plaintiff's Counsel: Mary Anne Betker
Defense Counsel: Kurt E. Barker, Paul C. Buchanan.

Employment

The executive director of the Bend Metro Parks & Recreation District was terminated by the Board and paid a year of salary as severance pay under her contract. The termination was a major topic of conversation in several of the media outlets in Bend. The director alleged that her termination was the result, in part, of her speaking out against the new Board members during their campaigns and after they took office. Judge King granted summary judgment against the director's claims

for a due process violation, wrongful discharge, breach of the covenant of good faith and fair dealing, Equal Pay Act violation, and the intentional infliction of emotional distress, and allowed claims for First Amendment retaliation, Fair Credit Reporting Act violations, whistleblowing under the state statute, sex discrimination, defamation and false light, and tortious interference with employment relationship to proceed to trial.

Ward v. Bend Metro Park & Recreation District, CV 03-481-KI (Opinion, March 17, 2005)
Plaintiff's Counsel: Roxanne Farra
Defense Counsel: Peter Mersereau

Motion Stay

Judge Aiken granted defendant's motion to stay pending the Oregon Court of Appeals decision in a state case considering the viability of Oregon's Public

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Utility Commission's penalty rules under ORS 183.400(1).

Central Elec. Coop. v. US West, CV 05-6017-AA
(Opinion April 12, 2005)
Plaintiff's Counsel: Martin Hansen
Defense Counsel: John Nusbaum

Disqualify Counsel

Plaintiff brought claims of breach of contract and breach of fiduciary duty against defendant. Plaintiff contended that its assignor had made equity investments in defendant and made loans to defendant, both of which defendant denied. Soon after defendant was served with the lawsuit, defendant moved to disqualify plaintiff's counsel. Judge Hubel determined first, that Oregon and not Massachusetts law applied. He then determined that based on the undisputed facts in the record, an attorney-client relationship was created and because of the nature of the closely held family corporation, the relationship was with defendant corporation as well as the shareholder. Under the Oregon Code of Professional Responsibility, there was a conflict of interest and plaintiff's counsel had to be disqualified. Judge Hubel

also rejected plaintiff's argument that defendant had waived its right to assert disqualification.

Philin Corp. v. Westhood, Inc., CV-04-1228-HU.
(Opinion March 11, 2005)
Plaintiff's Counsel: George Gregores and Louis Santiago; Defense Counsel: Joel Mullin

Immigration

Judge Ashmanskas denied a motion for a preliminary injunction sought by a union and Immigration Counseling Service against the United States and various officials, which challenged a new scheduling system that affected access to Immigration Information Officers at the Portland District Office of the United States Customs and Immigration Service.

The injunction was sought to maintain the status quo before the implementation of the internet-based scheduling system known as InfoPass. Plaintiffs argued that the new scheduling system's requirement that individuals use the internet to schedule an appointment with an Immigration Information Officer violates several

Constitutional rights and was implemented in violation of the APA.

In light of defendants' evidence regarding exceptions to the rule, and plaintiffs' failure to provide evidence of irreparable injury caused by the new scheduling system, their request for a preliminary injunction was denied.

SEIU Local 49 v. USA, CV 05-0271-AS
(Opinion, March 28, 2005)
Plaintiff's Counsel: Stephen Manning
Defense Counsel: Ken Bauman

Employment

Judge Aiken denied defendant's summary judgment motion finding many disputed issues of material facts on plaintiff's claims of racial discrimination, hostile work environment, disparate treatment, and retaliation.

Rivera v. Treesource Industries, Inc., CV 03-6279-AA
(Opinion, March 16, 2005)
Plaintiff's Counsel: Marianne Dugan
Defense Counsel: Carter Mann

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